regulated by law, as embodied in either the constitution or the statute. So it is clear that the law expressly stated will prevail rather than a right implied as a mere incident to the power of appointment. The question becomes, then, whether provision by statute for a fixed term is such expression of legislative intent to override the merely implied right to remove, as will deny the one appointing the right to remove. The practical unamity of authority hold to this effect.[7]

Therefore when the statute provided that the one appointed shall hold office for a definite term, the appointment confers on the incumbent the right to hold the particular office for the full official period, because the permanence of the official tenure negatives the authority of the appointing officer or board to remove at will. This doctrine was upheld in the recent case of *Commissioners of Sinking Fund* v. *Byars* (Ky), 180 S. W. 380, although the opinion does not go into the reason for the doctrine. In this case a state statute provided that the Sinking Fund Commissioners of the State of Kentucky should have the power to appoint a commissioner of motor vehicles, who was to have his office with the secretary of state and hold office for a term of four years. Nothing was said in the statute regarding removal and when the Board attempted to remove the incumbent of the office the court held that they had no power to remove him because the power of removal is neither incident to nor implied from the power of appointment, when the tenure of office is fixed by statute.

These rules are settled by constitutional provision in some states to the effect that, "when the duration of any office is not provided for by this constitution it may be declared by law, and if not so declared, it shall be held during the pleasure of the authority making the appointment." [8]

STATE ANTI-ALIEN LAWS AS DENYING EQUAL PROTECTION OF THE LAW.—"The principal, if not the sole, purpose of its prohibition (the Fourteenth Amendment to the Federal Constitution) is to prevent any arbitrary invasion by state authority of the rights of persons and property, and to secure to every one the right to pursue his happiness unrestrained, except by just, equal, and impartial laws."[1] Consistent with that provision of the Fourteenth Amendment, which guarantees to any person within the jurisdiction of a state the equal protection of the law, the states have the power to distinguish, select and classify the objects of legislation, and to arrange into different categories the persons who are to be amenable to the law, provided all classes of persons similarly situated are affected alike by its operation, and there is no arbitrary or capricious

[7] See note 6, *supra*.

[8] N. Y. Const., § 3, Art. 10; Cal. Const., § 7, Art.11. See, People *v.* Jewett, 6 Cal. 291; People *v.* Hill, 7 Cal. 97; Bergen *v.* Powell, 94 N. Y. 591; People *v.* Henry, 47 App. Div. 133, 62 N. Y. S. 102.

[1] Field, J. Butcher's Union Co. *v.* Crescent City Co., 111 U. S. 746, 759.

discrimination between such persons or classes of persons.[2] The guarantee of equal protection of the law extends universally to all persons within the territorial jurisdiction of the United States, without regard to any differences of race, of color, or of nationality.[3] In the very nature of things, the law must, in dealing with persons and property, arrange persons and objects of like character into classes, and legislation should conform to the peculiar needs of each. This principle finds legitimate expression in the selection and classification by the legislature, of property, trade or professions with reference to their regulation, or to the imposition of burdens upon them. Constitutional restrictions demand that the classification be based upon some fair and valid reason of public policy, and that the burden be borne equally by all coming within the classification.[4]

It is settled law, that, in dealing with matters of evidence, the legislature acts within the scope of its legitimate powers in declaring who shall be competent to testify in the state courts, even though any race or class of persons are prohibited from giving evidence.[5] In so doing, the legislature does not act arbitrarily. The theory of the law and the idea upon which the laws are founded is that every person may be required to testify, and only those may testify, who can assist the court in arriving at the probity of the facts upon which it must adjudicate. There is no inherent right to testify in any would-be-witness; who shall testify is a matter in the discretion of the legislature which can say what testimony is best and proper. Rules of evidence are framed not with a purpose of dispensing equal privileges to those desiring to testify but in order to procure the best method of ascertaining the facts in any case.

A somewhat similar power of the state is exemplified in the discriminatory legislation in regard to employment on public works. In the recent case of *Heim* v. *McCall,* 36 Sup. Ct. 78, the constitutionality of a statute, providing that only citizens of the United States should be employed in the construction of public works by or for the state or a municipality, and that in such employment citizens of New York State must be given preference, was attacked as denying to both employer and employee the equal protection of the law. As was said by the court in sustaining the validity of the statute, the state is a unit, and those who are not citizens of it are not members of it. It is a body corporate, and like any other body corporate, it may enter into contracts and hold or dispose of property. In doing this it acts through agencies of government. These agencies, when contracting for the state, or expending the state's moneys, are trustees for the people of the state. In the con-

[2] Pembina *v.* Pennsylvania, 125 U. S. 181; Kentucky Railway Tax Cases, 115 U. S. 321; State *v.* Hogan, 63 Ohio St. 202, 58 N. E. 572.

[3] Yick Wo *v.* Hopkins, 118 U. S. 356.

[4] Kentucky Railway Tax Cases, *supra;* Magoun *v.* Illinois Trust Co., 170 U. S. 283; Grainger *v.* Douglas Park Jockey Club, 148 Fed. (C. C. A.) 513; Barbier *v.* Connolly, 113 U. S. 27.

[5] People *v.* Brady, 40 Cal. 198, 6 Am. Rep. 604.

trol of such agencies and the expenditures of such moneys, it can prefer its own citizens to aliens without incurring the condemnation of the Fourteenth Amendment.[6] In indicating who shall be employed on public works a state is merely exercising the right of any other employer to say who shall work for him. It is not a question of the police power limited by the Fourteenth Amendment to reasonable exercise, but of the individual employer—the state as a corporate body—and employee to contracts as they see fit.[7] A state has absolute discretion to say what employees, upon public work are best conducive to its welfare. As a guardian and trustee for its people, it is the duty and right of a state to regulate matters which pertain to the public domain and the common property. Under this principle—the validity of a statute was upheld, which, having for its object the preservation of wild game, discriminated against aliens;[8] likewise a statute restricting to citizens of the state the right to plant oysters in one of its rivers.[9]

A different phase of the question of the power of a state to discriminate in its legislation is presented by the anti-alien laws enacted in a few of the states. The attempt by a state to limit the employment of alien labor by others than the state exceeds the bounds of its lawful powers in denying to persons, admitted to this country under authority of the United States government, the means of earning a livelihood, and therein denies to such person the equal protection of the law.[10] This regulation is purely an exercise of the police power, a typical example of a classification, which, under familiar principles of constitutional law, must be upon a reasonable basis from the point of view of the employer and the employee as well as from the purpose to be subserved, in order to escape the prohibition of the Fourteenth Amendment. Rights of all persons to life, liberty and property, as guaranteed under the Constitution, must be considered in cases of this nature, while in rules for employment of labor on public works, rights of the employees does not arise, for no one has a right to work for an employer without the employer's consent. The only exchangeable commodity possessed by a great portion of the foreigners who come into this country is their labor. The right to labor for subsistence is of the very essence of the personal freedom and opportunity that it is the purpose of the Amendment to secure.[11] Recently, in Ari-

[6] Heim *v.* McCall, 36 Sup. Ct. 78.

[7] Atkins *v.* Kansas, 191 U. S. 207; People *v.* Metz, 193 N. Y. 148, 85 N. E. 1070.

[8] Patsone *v.* Pennsylvania, 232 U. S. 138.

[9] McCready *v.* Virginia, 94 U. S. 391.

[10] In re Parrott, 1 Fed. 481; Ex parte Case, 20 Idaho 128, 116 Pac. 1037. In the latter case the statute excluded alien labor on both public and private works. The case arose under a contract of a municipal corporation. Since this is employment under an agency of the state, it is submitted, that the court erred in declaring the statute unconstitutional as applied to contracts let by municipal corporations. See Heim *v.* McCall, *supra.*

[11] In the very strong language of Mr. Justice Swayne: "Life is the gift of God, and the right to preserve it is the most sacred of the

zona, a statute was passed prohibiting large employers from employing less than a certain per cent native born citizens of the United States. The statute was declared invalid as denying to aliens the equal protection of the law. *Truax* v. *Raich,* 36 Sup. Ct. 7. Such a law, restricting the employment of aliens because they are a menace to the public welfare, can not be justified under the power of the state to make reasonable classifications in legislating to promote the public safety, health and welfare.[12] Broad and comprehensive as this power is, and though the Amendment is not designed to interfere with its operation, yet in all cases the exercise of the power must be reasonable and have some true relation to the public welfare. When it appears that this is not the effect of the law, it ceases to be an exercise of the police power, becomes arbitrary and unjust, and falls within the condemnation of the amendment. It is apparent that where the effect of a law is to deprive one of his right to labor for subsistence, it is not reasonable and can little subserve the public interest.

It has further been sought to justify laws directed against the employment of aliens by corporations under the power expressly reserved by the state to alter, amend or repeal the charters of corporations organized within the state. Though the extent of this power has never been exactly determined, yet it is well settled that when its exercise conflicts with the Federal Constitution, the former must give way to the superior authority. In determining this latter question neither the form of a statute, nor its declared purpose is looked to, but rather its operation and effect as enforced by the state.[13]

VALIDITY OF CONDITIONAL SALES AS TO PURCHASERS AND CREDITORS OF THE ORIGINAL VENDEE.—An agreement whereby the seller delivers goods to one who contracts to pay therefor on credit and whereby it is stipulated that title shall not pass until the price has been paid, is what is commonly known in the law as a conditional sale.[1] The majority of states, in the absence of statute, hold this form of contract not to violate any rule of law nor to be contrary to sound policy and the rights of the vendor are given full effect against bona fide purchasers from the buyer.[2] The payment of the

rights of man. Liberty is freedom from all restraints but such as are justly imposed by law. Beyond that line lies the domain of usurpation and tyranny. Property is everything which has an exchangeable value, and the right of property includes the power to dispose of it according to the will of the owner. Labor is property, and as such merits protection. The right to make it available is next in importance to the rights of life and liberty. It lies, to a large extent, at the foundation of most other forms of property." Slaughter-House Cases, 16 Wall. 36, 127.

[12] Butchers' Union *v.* Crescent City Co., 111 U. S. 746, 762; Allgeyer *v.* Louisiana, 165 U. S. 578.

[13] In re Parrott, *supra.*

[1] Williston, Sales, § 324; Mechem, Sales, § 563.

[2] Coggill *v.* Railroad Co., 3 Gray (Mass.) 545; Call *v.* Seymore, 40 Ohio St. 670; Ballard *v.* Burgett, 40 N. Y. 314; Sumner *v.* Woods, 67